

PILLSBURY WINTHROP SHAW PITTMAN LLP

DAVID A. JAKOPIN #209950

david.jakopin@pillsburylaw.com

THEODORE K. BELL #184289

tad.bell@pillsburylaw.com

DANIEL J. RICHERT #232208

daniel.richert@pillsburylaw.com

2475 Hanover Street

Palo Alto, CA 94304-1114

Telephone: (650) 233-4500

Facsimile: (650) 233-4545

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP

BRADLEY J. HULBERT

hulbert@mbhb.com

KURT W. ROHDE

rohdek@mbhb.com

RICHARD A. MACHONKIN

machonkin@mbhb.com

300 South Wacker Drive

Chicago, IL 60606-6709

Telephone: (312) 913-0001

Facsimile: (312) 913-0002

Attorneys for Defendant

DIGITAL NETWORKS NORTH AMERICA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,,

Plaintiff,

vs.

DIGITAL NETWORKS NORTH
AMERICA, INC., a Delaware corporation,

Defendant.

Case No. 07 CV 5568

DEFENDANT'S MOTION PURSUANT TO
CIVIL L.R. 6-3 TO ENLARGE TIME TO
RESPOND TO THE AMENDED
COMPLAINT PENDING THE OUTCOME
OF MOTION TO STAY

[Civ. L.R. 6-3]

Courtroom: 2, 17th Floor

Judge: Hon. Jeffrey S. White

Filed Concurrently:

1. Declaration of Theodore K. Bell

2. Proposed Order

1 **I. RELIEF SOUGHT.**

2 Defendant DIGITAL NETWORKS NORTH AMERICA, INC. (“Defendant” or
3 “DNNA”) moves pursuant to Civil Local Rule 6-3 for an Order to extend the time to respond
4 to the amended complaint in this patent litigation until after the Court rules on DNNA’s
5 motion to stay the action pending reexamination of the ‘184 patent (“Motion to Stay”). *See*
6 Dkt. 24. The Motion to Stay is currently scheduled to be heard on January 18, 2008. *Id.*
7 DNNA’s response to the amended complaint is currently due January 4, 2008. *See* Dkt. 14.

8 **II. REASONS SUPPORTING THE MOTION.**

9 A. DNNA’s Pleading Should Await The Court’s Decision on DNNA’s Motion to
10 Stay.

11 As discussed in the Motion to Stay, a stay will conserve the resources of both the
12 Court and the parties and will provide the benefit of simplifying or eliminating the issues for
13 trial. It makes no sense that DNNA should be required to expend the significant time and
14 money resources to plead to the amended complaint while its Motion to Stay is pending.
15 Given that the ‘184 patent will expire in less than three months—independent of the
16 reexamination—and that this litigation remains in its incipient stages, plaintiff will not be
17 prejudiced in any way by entry of an order staying the present litigation pending the United
18 States Patent and Trademark Office’s ongoing reexamination of the ‘184 patent. Further,
19 plaintiff will not be prejudiced by staying DNNA’s time to respond during the pendency of
20 the Motion to Stay.

21 B. Plaintiff Has Refused to Stipulate to Stay the Pleading During While
22 Awaiting The Court’s Decision on the Motion to Stay.

23 DNNA asked plaintiff to stipulate to the requested enlargement of time, and plaintiff
24 refused. *See* Declaration of Theodore K. Bell (“Bell Decl.”), filed concurrently herewith, ¶
25 3. The parties previously stipulated to an extended response date to an original complaint
26 and there have been no previous enlargements of time to plead to the amended complaint.
27 Bell Decl. ¶ 4.

C. DNNA Will Be Prejudiced If It Must Plead Now.

DNNA will be substantially prejudiced if it is required to respond to the amended complaint while the Court is considering the Motion to Stay. DNNA would spend considerable amounts of time and money in a Rule 11 pleading that would very likely be moot if the Court grants the Motion to Stay. No purpose would be served by such make-work. If the Motion to Stay is granted, the enlargement would not other affect the schedule for the case or the administration of justice. If the stay motion is denied, DNNA would promptly respond to the amended complaint. Granting this motion will promote, not impair, the orderly consideration of this case and will not prejudice plaintiffs in any way.

III. CONCLUSION.

For all of the reasons set forth herein, as well as those set forth in the accompanying Declaration of Theodore K. Bell, DNNA respectfully requests that the Court grant this motion and entered an Order in the form attached staying DNNA's response date during the pendency of the Motion to Stay and ordering DNNA to respond to the amended complaint within ten days of any ruling by the Court denying DNNA's motion.

Dated: December 11, 2007.

PILLSBURY WINTHROP SHAW PITTMAN LLP
DAVID A. JAKOPIN
THEODORE K. BELL
DANIEL J. RICHERT
2475 Hanover Street
Palo Alto, CA 94304-1114

MCDONNELL BOEHNEN HULBERT &
BERGHOFF LLP
BRADLEY J. HULBERT
KURT W. ROHDE
RICHARD A. MACHONKIN
300 South Wacker Drive
Chicago, IL 60606-6709

By /s/
Theodore K. Bell
Attorneys for Defendant,
DIGITAL NETWORKS NORTH AMERICA,
INC.